

## § 235.5

decision to withdraw his or her application for admission must be made voluntarily, but nothing in this section shall be construed as to give an alien the right to withdraw his or her application for admission. Permission to withdraw an application for admission should not normally be granted unless the alien intends and is able to depart the United States immediately. An alien permitted to withdraw his or her application for admission shall normally remain in carrier or Service custody pending departure, unless the district director determines that parole of the alien is warranted in accordance with § 212.5(b) of this chapter.

[62 FR 10358, Mar. 6, 1997; 62 FR 15363, Apr. 1, 1997; 65 FR 82256, Dec. 28, 2000]

### § 235.5 Preinspection.

(a) *In United States territories and possessions.* In the case of any aircraft proceeding from Guam, the Commonwealth of the Northern Mariana Islands (beginning November 28, 2009), Puerto Rico, or the United States Virgin Islands destined directly and without touching at a foreign port or place, to any other of such places, or to one of the States of the United States or the District of Columbia, the examination of the passengers and crew required by the Act may be made prior to the departure of the aircraft, and in such event, final determination of admissibility will be made immediately prior to such departure. The examination will be conducted in accordance with sections 232, 235, and 240 of the Act and 8 CFR parts 235 and 240. If it appears to the immigration officer that any person in the United States being examined under this section is prima facie removable from the United States, further action with respect to his or her examination will be deferred and further proceedings regarding removability conducted as provided in section 240 of the Act and 8 CFR part 240. When the foregoing inspection procedure is applied to any aircraft, persons examined and found admissible will be placed aboard the aircraft, or kept at the airport separate and apart from the general public until they are permitted to board the aircraft. No other person will be permitted to depart on such aircraft until and unless he or she is found

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to be admissible as provided in this section.

(b) *In foreign territory.* In the case of any aircraft, vessel, or train proceeding directly, without stopping, from a port or place in foreign territory to a port-of-entry in the United States, the examination and inspection of passengers and crew required by the Act and final determination of admissibility may be made immediately prior to such departure at the port or place in the foreign territory and shall have the same effect under the Act as though made at the destined port-of-entry in the United States.

[62 FR 10358, Mar. 6, 1997, as amended at 74 FR 2836, Jan. 16, 2009; 74 FR 25388, May 28, 2009]

### § 235.6 Referral to immigration judge.

(a) *Notice—(1) Referral by Form I-862, Notice to Appear.* An immigration officer or asylum officer will sign and deliver a Form I-862 to an alien in the following cases:

(i) If, in accordance with the provisions of section 235(b)(2)(A) of the Act, the examining immigration officer detains an alien for a proceeding before an immigration judge under section 240 of the Act; or

(ii) If an asylum officer determines that an alien in expedited removal proceedings has a credible fear of persecution or torture and refers the case to the immigration judge for consideration of the application for asylum, except that, prior to January 1, 2015, an alien arriving in the Commonwealth of the Northern Mariana Islands is not eligible to apply for asylum but the immigration judge may consider eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture.

(iii) If the immigration judge determines that an alien in expedited removal proceedings has a credible fear of persecution or torture and vacates the expedited removal order issued by the asylum officer, except that, prior to January 1, 2015, an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands is not eligible to apply for asylum but an immigration judge may consider eligibility for withholding of removal